

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 531 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

VAGHARI KISSA BIKHA

Appearance:

Shri S.R. Divetia, Addl. Public Prosecutor, for
the Appellant-State

Shri Y.S. Lakhani, Advocate, for the Respondent
(Original Accused No. 2)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/01/97

ORAL JUDGEMENT

The judgment and order of acquittal passed by the
learned Judicial Magistrate (First Class) at Porbandar on
30th April 1991 in Criminal Case No. 96 of 1987 is under

challenge in this appeal by leave of this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted the respondent herein of the offence punishable under sec. 124 of the Bombay Police Act, 1951 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The respondent herein was driving one truck bearing R.T.O. Registration No. GTE 7560 as its driver in service of one Vaghari Balu Nanji Solanki (the deceased for convenience). It appears that on 17th July 1986 the respondent herein was carrying in his truck logs of wood and he was accompanied by the deceased at the relevant time. While the truck was near Bhanu's Dairy in Porbandar, the police detained it and made certain enquiries about the truck load. It is the case of the prosecution that neither the respondent herein nor the deceased could give satisfactory explanation about it. Thereupon a complaint came to be filed in the Court of the Judicial Magistrate (First Class) at Porbandar charging the respondent herein and the deceased with the offence punishable under sec. 124 of the Act. It came to be registered as Criminal Case No. 96 of 1987. The charge against the respondent and the deceased as the accused came to be framed on 23rd February 1989. Neither accused pleaded guilty to the charge. Thereupon they were tried. It appears that in the course of trial the deceased breathed his last as transpiring from the pursis submitted to the Court at Ex. 11 on the record of the case. The prosecution case against him thereupon stood abated as recorded by the learned trial Magistrate in his impugned judgment and order of acquittal. After recording the prosecution evidence and after recording the further statement of the respondent herein and after hearing arguments, by his judgment and order passed on 30th April 1991 in Criminal Case No. 96 of 1987, the learned trial Magistrate acquitted the respondent herein of the offence punishable under sec. 124 of the Act. That aggrieved the State Government as the prosecution agency. It has therefore invoked the appellate jurisdiction of this Court by means of this appeal after obtaining its leave under sec. 378 of the Code for questioning its correctness.

3. Learned Additional Public Prosecutor Shri Divetia for the appellant-State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate ought not to have brushed aside the evidence of the complainant only on the ground that he was a police witness and his evidence needed

corroboration. Relying on the testimony of the complainant, it has been urged by learned Additional Public Prosecutor Shri Divetia for the appellant-State that the learned trial Magistrate ought to have come to the conclusion that the prosecution could establish its case against the respondent herein beyond any reasonable doubt. As against this, learned Advocate Shri Lakhani for the respondent herein has submitted that on the facts and in the circumstances of the case which were of peculiar nature, the learned trial Magistrate was justified in insisting on corroboration of the testimony of the interested complainant. Learned Advocate Shri Lakhani for the respondent herein has urged that the incident occurred on 17th July 1986 and the complaint was filed more than five months thereafter on 29th December 1986 and the inordinate delay on the part of the prosecution has not come to be explained, and as such the impugned judgment and order of acquittal deserves to be affirmed also on this ground. In any case, runs the submission of learned Advocate Shri Lakhani for the respondent herein, the view taken by the learned trial Magistrate is a possible view and, according to well-settled principles of law governing acquittal appeals, this Court need not interfere with it in this appeal.

4. It is true that the law does not require any corroboration of any police witness examined as the complainant in a criminal trial. Insistence on corroboration of such a witness may be necessary on the facts and in the circumstances of a case which may be of peculiar nature. In the instant case, both the panch witnesses turned hostile. It is a matter of record that the respondent herein and the deceased produced certain documents explaining the authority to carry the logs of wood in the truck in question. It was the case of the complainant that those documents were not genuine. Those documents are on the record of the case as Exhs. 13/1 and 13/2. The complainant has not chosen to explain the basis of his dissatisfaction about the genuineness of the documents. In that view of the matter, the learned trial Magistrate was justified in insisting on corroboration of the oral testimony given by the complainant as a police witness.

5. Besides, a suggestion was made to him in cross-examination on behalf of the respondent that genuine documents were shown to him but he tore them off. In that view of the matter also, the learned trial Magistrate was not wrong in insisting on corroboration of the oral testimony of the police witness.

6. Learned Advocate Shri Lakhani for the respondent herein is right in his submission that the delay in launching the prosecution is not explained by or on behalf of the prosecution in any manner. As pointed out hereinabove, the offence is stated to have been committed on 17th July 1986. The complaint in that regard has come to be filed more than five months thereafter on 29th December 1986. It thus suffers from the vice of inordinate delay of five months on the part of the complainant. No explanation whatsoever has been given for such inordinate delay in lodging the complaint by the complainant in the instant case. That by itself would be fatal to the prosecution case.

7. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of acquittal passed by the learned trial Magistrate calls for no interference by this Court in this appeal.

8. In the result, this appeal fails. It is hereby dismissed.
